

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:19-00010

RAHEM LIPFORD

O R D E R

Upon the defendant's Motion to Suppress and the evidentiary hearings of May 9, 2019 and July 16, 2019, the court makes the following Findings of Fact by a preponderance of the evidence, and Conclusions of Law.

In January 2017, then Charleston Police Officer Casey Rankin (who is now a Deputy United States Marshal) received an anonymous tip that a black male by the name of Rahem, who drove a blue Range Rover, was distributing heroin on the West Side of Charleston. After some investigation, Officer Rankin was able in February 2017 to identify the individual as Rahem Lipford who resided at 1721 Claire Street in Charleston. Rankin also learned that the suspect had been convicted of three felony drug offenses and one misdemeanor drug offense.

Rankin proceeded to surveil the residence at 1721 Claire Street about once a week for an hour or so during the next four or five months. The residence at 1721 Claire Street is built into the hillside with the lower level used as an open porch on the left half and a carport on the right half where, at times, the blue Range Rover was parked so that the front of the vehicle was within a foot or so of Claire Street and the rear of the vehicle extended into the carport area beginning at about the forward portion of the rear left wheel. The two sides were separated only by a structural pillar at the front. The left side, or porch area, was fenced off with a white wrought iron fence that extended from the left front to the pillar. In front of and close to the wrought iron fence, were two black opaque garbage containers about three-feet high with lid enclosures. Those two cans were side-by-side and routinely left in that position. The front of each of the two cans was about ten to twelve feet from Claire Street.

The City of Charleston Refuse and Recycling Department collected the garbage and trash from bags and containers of residences within the city once each week. The pickup on Claire Street was each Tuesday. The city pickup crew was observed by Officer Rankin about one month prior to Tuesday, July 11, 2017,

around 10:00 a.m., collecting trash bags out of the two cans at 1721 Claire Street by traversing the some ten to twelve feet from Claire Street to the location of the cans in front of the wrought iron fence.

At 1:00 a.m. on July 11, 2017, Officer Rankin and fellow Officer Hodge, traveled to a point near 1721 Claire Street for the purpose of making a trash pull so that they could examine the contents and retrieve any items that might indicate illicit drug activity. When they arrived, they observed the defendant seated in his automobile. Recognizing that they could not surreptitiously pull the trash bags, they left. Officer Rankin, who was scheduled for a training session later that same morning, requested City of Charleston Patrolman Christopher Bass to make the trash pull between 4:00 a.m. and 5:00 a.m. that same morning. Officer Bass did so in keeping with instructions from Officer Rankin. Officer Bass pulled what proved to be three bags of trash from the two cans and deposited them in the city parking building on Reynolds Street adjacent to a 300 Chrysler parked there. It is noted that the city parking building just referenced is patrolled by city officers. Officer Rankin picked up the three bags of trash at about 8:00 a.m. that same morning.

The applicable city ordinance, adopted about 2014, with respect to the placement of refuse and recycling bags for pickup, directs that the resident place the bags within five feet of the curb. A city refuse truck driver, who drives the truck but does not do the pickup, testified that those collecting the trash bags would go only as far as six or seven feet into the resident's property for pickup purposes. The Director of Refuse and Recycling, who had been in that position about four years but was unaware of the five-foot rule until the morning of the hearing, testified that his department was customer oriented and he would expect the city collectors to go to containers that were located in front of the wrought iron fence in order to collect the refuse bags therefrom.

Based on all the evidence, the court is satisfied that the refuse and recyclables for city pickup at 1721 Claire Street was located in two cans, situate at a point outside and near the wrought iron fence, from which the trash bags were collected by the city each Tuesday. The defendant had no reasonable expectation of privacy in those two cans.

Within the contents of the three trash bags pulled on July 11, 2017, there were four empty packages of Dutch Master cigarillos. Each one of those would have originally contained three cigarillos. There was another empty Sunflower "Extra Long" package. A plentiful supply of tobacco was also recovered indicating that the cigarillos may have been emptied of the tobacco in order that they could be repacked with a substance such as marijuana within the same paper wrapping, and then smoked. Also found was a burnt roach. A child support notice addressed to Charley Ruiz who was the girlfriend occupant along with her two children at 1721 Claire Street was located within the trash bags, as well as a notice addressed to Rahem Lipford. In addition, there were several plastic sandwich baggies, many of which had the corners torn out of them, a practice employed by sellers of narcotics to create a smaller package in which to sell different types of narcotics, including marijuana.

In his affidavit for a search warrant presented to a state magistrate, Detective Rankin accurately represented that the defendant's "trash cans," from which and at the time the narcotics-related articles were taken on Tuesday, July 11, 2017, were in a location that was consistent with normal trash pickup. These circumstances formed a reasonable basis for the probable cause

belief that evidence of marijuana drug distribution would be found in the residence.

Moreover, the search warrant was executed on the residence by the officers in the good faith belief that it was a valid exercise of authority under the Fourth Amendment for which there was probable cause. The property seized thereunder is admissible evidence in this case.

Independently of the foregoing, the court applies the factors found in *United States v. Dunn*, 480 U.S. 294 (1987);

[1] the proximity of the area claimed to be curtilage to the home - the area occupied routinely by the two cans is immediately adjacent to but outside the home.

[2] whether the area is included within an enclosure surrounding the home - the area occupied by the two cans is not within an enclosure.

[3] the nature of the uses to which the area is put - used as a walkway/driveway area and for the routine storage of refuse and recyclables in cans from which the contents are picked up by weekly by city crews.

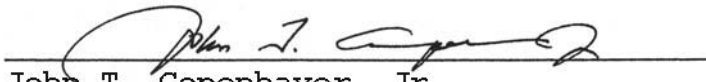
[4] the steps taken by the resident to protect the area from observation by people passing by - none.

On balance it marginally appears that the two cans were routinely placed outside the curtilage to the home at 1721 Claire Street.

The Motion to Suppress is DENIED.

The Clerk is directed to forward copies of this order to the defendant and all counsel of record.

DATED: September 3, 2019


John T. Copenhaver, Jr.
Senior United States District Judge